IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 1 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH TAX

Versus

CHINUBHIA LALBHAI (HUF)

Appearance:

1. WEALTH TAX REFERENCE No. 1 of 1990
MR MANISH R BHATT for Petitioner No. 1
MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following questions are referred for the opinion of this Court in respect of assessment years 1965-66 to 1969-70:-

(i) "Whether, the Appellate Tribunal is right in law in holding that the property at plot No.614-B "Panchvati Gulbhai Tekra Area" Ahmedabad qualified for exemption u/s.5(1)(iv) of the Income-tax Act, 1961(Wealth-tax Act, 1957) ?

(ii) Whether, the Appellate Tribunal is right in law in holding that the benefit of valuation under Rule -1BB of the W.T. Rules was available for the property at plot No.61-B "Panchvati Gulbhai Tekra Area," Ahmedabad?

(iii) Whether, the Appellate Tribunal is right in law in confirming the order made by the Commissioner of Wealth-tax (Appeals) directing the W.T.O. to value the unquoted shares/equity of private limited companies in accordance with the principles laid down by the Gujarat High Court in the case of Ashok K. Parikh, (129 ITR 46) ?"

2. Heard Mr Manish R. Bhatt, learned Sr. Standing Counsel appearing on behalf of the revenue and Mr HM Talati, advocate on behalf of the respondent - assessee.

3. So far as the first question is concerned, it appears that there was difference of opinion amongst the members of the Tribunal and the issue was referred to the third member. The third member in his order has found as a matter of fact that the assessee has not claimed exemption under section 5(1)(iv) of the Wealth-tax Act, 1957 in respect of any other house and it was also further observed that the property mentioned was to be treated as a house and as a residential house which was being used by the assessee for the purpose of his residential house. The Tribunal has, therefore, accepted the plea of the assessee. This finding was given by the Tribunal after considering all the necessary facts and circumstances of the case as well as after appreciation of the evidence led by the parties before it.

In this view of the matter, we are of the view that it is a finding of fact given by the Tribunal and this Court would not go to disturb the said finding. We are, therefore, of the view that no question of law is referred by the Tribunal. We, therefore, decline to answer the said question as the same is based on finding of fact.

4. As far as second question is concerned, it is submitted that it was with regard to the benefit of valuation under Rule -1BB of the Wealth Tax Rules which was available to the assessee for the property at plot No.614-B "Panchvati Gulbhai Tekra Area, Ahmedabad. As stated above, the Tribunal has taken the view that the said property was qualified for exemption under Section 5 (1)(iv) of the Wealth-tax Act, 1957. Since the Tribunal has decided the issue regarding exemption under Section 5(1)(iv) of the Wealth-tax Act, 1957 in favour of the assessee and we have not disturbed the said finding of the Tribunal, the second question is not required to be answered by this Court.

5. Even otherwise, the issue raised in the second question is also covered by the decision of the Supreme Court in the case of Commissioner of Wealth-tax vs. Sharvan Kumar Swarup and Sons (1994) 210 ITR 886 wherein it is held as under:-

> "Rule 1BB of the Wealth-tax Rules, 1957, which came into force on April 1, 1979 prescribing the method of valuing a house wholly or mainly used for residential purposes, merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of rule 1BB, it would not have been objectionable, nor would there have been any legal impediment, to adopt the mode of valuation embodied in rule 1BB, namely, the method of capitalisation of income on a number of years' purchase value. The rule was intended to impart uniformity in valuation and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar,
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> Rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings pending on April 1, 1979 when the rule came into force."

Following the aforesaid decision, we hold that the Tribunal has not committed any error and the Tribunal is right in holding that the benefit of valuation under Rule 1BB of the Wealth Tax Rules was available for the property at plot No.614-B "Panchvati Gulbhai Tekra Area,

Ahmedabad".

6. So far as the third question is concerned, our attention is invited to the decision of the Supreme Court in the case of Bharat Hari Singhania vs. Commissioner of Wealth-tax (1994) 207 ITR 1 wherein it is held that Rule 1D of the Wealth-tax Rules, 1957, prescribing the break-up method for valuing unquoted equity shares of a company (other than an investment company or a managing agency company) is perfectly valid and effective. Neither is it inconsistent with Section 7(1) of the Wealth-tax Act, 1957, nor does it travel beyond the purview of section 7(1).

Following this decision, we hold that the view taken by the Tribunal is not the correct view and the Tribunal was not justified in confirming the order of the Commissioner of Wealth-tax (Appeals) directing the Wealth-tax Officer to value the unquoted shares/equity of private limited companies in accordance with the principles laid down by this Court in the case of Ashok K. Parikh 129 ITR 46. The valuation has to be done in accordance with the principles laid down by the Supreme Court in Bharat Hari Singhania 's case (supra).

In view of the above, question No.3 referred to us is answered in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

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